

7/22  
COPY to: DM's, KMM's  
AM's, RBM, ROM

FYI

Bill

July 1, 1997

TO: REGIONAL SALES MANAGERS  
SUBJECT: TOBACCO SETTLEMENT  
-- TRADE PARTNER QUESTIONS/NON-PARTICIPATING COMPANIES

It has recently come to our attention that several of our Trade Partners, both Retail and Wholesale, have inquired as to the method by which business will be conducted in relation to the Tobacco Settlement and non-participating companies. In order to provide you with the information base necessary to address this issue, please note the following excerpt from the Settlement document which pertains to the above subject matter:

"Page 26

TITLE III: Penalties and Enforcement; Consent Decrees;  
Non-Participating Companies

C. Non-participating companies

-- The regime envisioned by the resolution would be substantially undercut if certain companies were free to ignore the limitations it imposes, and were instead able to sell tobacco products at lower prices (because they were not making the payments described above) and through less restricted advertising and marketing activities. The resolution accordingly anticipates the possibility that some manufacturers of tobacco products may not consent to the institution of this regime. Rather than seeking to impose on such manufacturers the advertising restrictions, full required payments and corporate culture changes set forth above, the resolution avoids constitutional questions that might otherwise be raised by establishing a separate regime for non-participating manufacturers.

-- Non-participating manufacturers would be subject to the access restrictions and regulatory oversight set forth above. They would receive none of the civil liability protections described in Title VIII. Their product would be subject to a user fee equal to the portion of the payments by participating manufacturers allocated to fund public health programs and federal and state enforcement of the access restrictions.

51861 5631

- The resolution further recognizes that - unlike the participating manufacturers - non-participating manufacturers will not have made consensual payments to settle governmental actions for health care costs, to settle class actions and in to provide consideration for the partial settlement of individual tort actions (including punitive damages claims). Because such actions would remain wholly unsatisfied, it is vital that the claimants be ensured that funds will be available to satisfy any judgments that may be obtained. Accordingly, the resolution requires that each non-participating manufacturer place into an escrowed reserve fund each year an amount equal to 150% of its share of the annual payment required of participating manufacturers (other than the portion allocated to public health programs and federal and state enforcement). These escrowed funds would be earmarked for potential liability payments, and the manufacturer would reclaim them with interest 35 years later to the extent they had not been paid out in liability.
- Moreover, the resolution also recognizes that - because non-participating manufacturers are not subject to the corporate culture commitments requiring manufacturers to monitor distributor and retailer compliance with the underage access restrictions - distribution and retail sales of those manufacturers' products present a particularly great obstacle to the achievement and enforcement of the access restrictions. Accordingly, the resolution provides that the exemption from civil liability applicable to distributors and retailers of the products of participating manufacturers will not apply to distributors and retailers who handle tobacco products of non-participating manufacturers."

As is the case with all information in the Settlement document, this information is subject to change based on final approval of the appropriate parties. Please feel free to contact your AMO and/or NTMM should additional information become necessary.

Program contacts:	Jim Perry (NESA)	ext. 4360
	Bill Duffy (MWSA)	ext. 5776
	John Barnhardt (SSA)	ext. 7161
	Rich Pettorini (WSA)	ext. 1052

51861 5632